IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

W.P. No. 159 /1996

PETITIONER: R.N. Rana, Aged about 50 years
S/o Shri Natwar Singh Rana,
R/o L.I.G. 28, Sector-1,
Shankar Nagar, Raipur
Tahsil & Distt. Raipur (MP)

-Versus-

RESPONDENTS:

1. Dena Bank, A Banking Company incorporated under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having it's Head Office at Maker Towers 'E', Cuffe Parade, Bombay 400 005 Through the Chairman

2. The General Manager, Personnel Administration & Social Banking (PASB) Dena Bank, Maker Towers 'E' Cuffe Parade, Bombay 400 005

3. The Deputy General Manager, Dena Bank, Maker Towers 'E', Cuffe Parade, Bombay 400 005

4. The Assistant General Manager (Personnel), Personnel Department, 7th Floor, Dena Bank, Maker Towers 'E', Cuffe Parade, Bombay 400 005

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

158

Writ Petition No. 159 of 1996

Petitioner R. N. Rana

Versus

Respondents Dena Bank and others

Post for order on 6th September, 2006.

Sd/-
Satish K. Agnihotri
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 159 of 1996

159

Petitioner R. N. Rana

Versus

Respondents Dena Bank and others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Miss Deepali Pandey, Advocate for the petitioner.

Shri P. S. Koshy, Advocate for the respondents.

O R D E R

(6th September, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioner has filed this petition under Article 226 of the Constitution of India impugning the dismissal order dated 30.8.1989 (Annexure P/1), rejection of the appeal vide order dated 24.2.1990 (Annexure P/4), dismissal of the review petition vide order dated 6.4.1992 (Annexure P/8), communicated to the petitioner vide order dated 7/16.4.1992 (Annexure P/7), and rejection of the review appeal vide order dated 15.9.1995 (Annexure P/11) and seeking reinstatement in service, award of suspension allowance or part wages with consequential benefits.

2. That the undisputed facts in nutshell, are that the petitioner was an employee of the respondent-Dena Bank. At the relevant time the petitioner was posted as Branch Manager, Abhanpur Branch, District- Raipur during the period from 1985 to 1986. The petitioner was served with a charge sheet-cum-suspension order dated 1.9.1988 (Annexure R/1) to the effect that as Branch Manager, a number of cheques for the credit of M/s Patel Timber Mart were purchased, following the credit facilities, as per the

sanction letter dated 11.12.1984 thereby the petitioner committed following irregularities:- (160)

"1. The petitioner failed to follow the usual banking practice.

2. He fraudulently purchased as accommodation cheques.

3. He replaced cheque/s by another cheque/s.

4. He manipulated/replaced/altered the forwarding schedule of purchased cheques to appear that the cheques were purchased on the date of the said forwarding cheque schedules and thereby concealing the actual date of purchase.

5. He purchased cheques with the sole intention to allow M/s Patel Timber Mart to remit/funds/money through the above account for credit of M/s Marayan Saw Mill (whose cheques were purchased previously) to ensure that subsequent purchased cheques were honoured at the drawee branch.

6. The petitioner unauthorisedly detained/kept the cheques in his personal custody, and made false entries in the books of the Banks to show/appear that same were sent by hand delivery.

7. He colluded with the Branch Manager/Officers of Gudiyari branch to ensure that the credit advises of the said Gudiyari branch in respect of cheque/s purchased by Abhanpur Branch were received at Abhanpur Branch on the same day on which the petitioner purchased subsequent cheques at Abhanpur Branch to facilitate purchase of accommodation cheque/s.

8. The petitioner detained/kept one of the cheques deposited by M/s Patel Timber Mart in his personal custody which he handed over to the Vigilance Officers of the Head Office on 3/12/86 and admitted his guilt/s.

9. The petitioner allowed undue credit facilities to M/s Patel Timber Mart by purchasing the cheques with the sole intention of giving undue advantage/pecuniary gain to the client and/or to himself and/or to M/s Narayan Saw Mill thereby exposing the Bank to heavy financial risk/loss.

The details of the above act/s of the petitioner are described in annexure 'A' enclosed with the charge sheet."

(161)

3. It was further charged that the petitioner purchased one bill of Rs. 39000/- under BP 123 on 5/4/85, drawn on M/s Patel Timber Mart. The said Bill was returned by the Odhav Branch, Ahmedabad on 17/06/85. Instead of recovering the Bill amount with interest from M/s Patel Timber Mart, the petitioner had chosen to repurchase the same Bill under BP 177 on 27/06/1985 and reversed the earlier entry of BP 123. Then the Bill No. 177 was returned unpaid and the petitioner did not make any notings/remarks, writings in the books of the Bank and detained the said returned bill with himself. The petitioner paid Rs. 15.60 as postage when the said Bill was returned by the State Bank of India, Rakhial. The petitioner had even failed to recover the bill amount through the above mentioned Odhav Branch, Ahmedabad.

4. The above acts of the petitioner were treated as misconduct of lack of honesty, integrity, diligence, devotion in discharge of duties and/or manipulating the Bank records, and/or maneuvering to conceal the facts, and/or committing the fraud on the bank, and/or act/s prejudicial to the interest of the Bank involving or likely to involve the Bank in heavy financial loss/risk and/or Act/s unbecoming of a Bank Officer. The said acts of misconduct, if proved, amounts to contravention of Regulation 3(1) read with the Regulation 24 of the Dena Bank Officers Employees' (Conduct) Regulations 1976, punishable under Dena Bank Officer Employees' (Discipline and Appeal) Regulations 1976. The petitioner was called upon to submit his explanation within a period of 7 days.

5. In response to the said charge-sheet -cum- suspension order the petitioner submitted his reply on 30.9.1988 (Annexure R/2) stating that the petitioner in his letter dated 3.12.1986 had already admitted the major charges levelled against him. The petitioner

(162)

made a mercy appeal to forgive him keeping in view of his service for 16 years and having five children. The petitioner made one more representation on 19.10.1988 (Annexure R/3), submitting some explanation, confessing that the illegalities have been committed by him, however, it was submitted that since no loss was caused to the Bank, the case of the petitioner should be considered sympathetically and he be punished with stopping of increments.

6. One Shri V. K. Jain was appointed as enquiry Officer. Due notice was given to the petitioner and the petitioner participated in the enquiry, and in the enquiry also the petitioner has admitted his guilt in categorical terms, submitting that no loss has been caused to the petitioner and the case of the petitioner should be dealt with sympathetically. The Enquiry Officer submitted his report on 11.7.1989.

7. The disciplinary authority i.e. Zonal Manager accepting the finding of the enquiry officer on the charges framed and proved, dismissed the delinquent officer without notice in exercise of powers under Regulation 7 (3) of the Dena Bank Officer Employees (Discipline & Appeal) Regulations 1976 by order dated 30.8.1989 (Annexure P/1). The statutory appeal dated 12.9.1989, preferred by the petitioner before the appellate authority i.e. Deputy General Manager (Social Banking Department), was dismissed vide memo dated 24.2.1990 (Annexure P/4), confirming the order passed by the Zonal Manager, M.P. Zone, Bhopal.

8. The review petition dated 1.5.1990, filed by the petitioner against the order of the appellate authority was also dismissed by the General Manager (PASB) (Reviewing Authority) vide order dated 6.4.1992 (Annexure P/8), communicated to the petitioner vide memo dated 7.4.1992 (Annexure P/7). The second review appeal

(163)

filed by the petitioner dated 26.8.1995 was also dismissed on the ground of non-maintainability vide memo dated 15.9.1995 (Annexure P/11).

9. Miss Deepali Pandey, learned counsel appearing for the petitioner submitted that the petitioner has filed this petition on the ground that no enquiry report was supplied to the petitioner, relevant documents were not supplied during the enquiry and the punishment awarded to the petitioner is disproportionate to the acts of the misconduct committed by the petitioner. Learned counsel relied on clause (vii) of the claim application in respect of the advances to the borrowers to the effect that the loss in respect of the credit facility/ies under claim has not arisen on account of any negligence in the observance of the necessary safeguards and procedures in regard to appraisal, supervision and follow up of the credit facility or any dishonesty on the part of our employees or owing to decisions taken by them contrary to or in contravention of the instructions issued by us or the corporation, to submit that the petitioner had observed all the necessary safeguards and procedures in regard to appraisal , supervision and follow up of the credit facility. Thus, the petitioner could not be held guilty of loss in respect of the credit facility.

10. Shri P. S. Koshy, learned counsel appearing for the respondents, per contra, submitted that the petitioner was given full opportunity to defend his case. The petitioner in his representations dated 30.9.1988 and 19.10.1988 as also in the departmental proceedings, has clearly and categorically admitted all the major charges levelled against him. The petitioner has not denied that any act, charged against him, was not committed by him but has given explanation that the same was committed on certain circumstances and no financial loss has been caused to the Bank.

(164)

11. According to learned counsel for the respondents, the petitioner was served with the enquiry report along with the order, which is evident from the reading of the order itself. No notice was given before the final order was passed, as in the facts and circumstances of the case when the charges levelled against the petitioner have been admitted by the petitioner, no useful purpose would have been served by giving him a second show cause notice after the enquiry before imposition of the penalty. The petitioner was given all the relevant materials as required by him.

12. I have heard learned counsel for the parties and perused the records appended to the petition as also to the return. It is evident that the petitioner had admitted all the charges levelled against him and the defence of the petitioner was only to the extent that there was no financial loss caused to the Bank. The petitioner was supplied with an enquiry report also along with the order. The petitioner approached the appellate authority, revisional authority after having received the enquiry report. Thus, the purpose of issuing second show cause notice has also been served and the petitioner has sufficient opportunity to submit his explanation to the enquiry report. The petitioner has further failed to prove as to whether any prejudice was caused to him by non issuance of the second show cause notice after enquiry. Hence in the facts and circumstances of the case it is held that the procedural requirements in conduct of an enquiry and thereafter before passing the impugned order of termination has sufficiently been met with and no irregularity, impropriety, or illegality has been noticed/found in the enquiry and thereafter.

13. The reliance of learned counsel for the petitioner on clause (vii) of the application form, credit facility is misplaced as the charges are

(165)

that the petitioner committed negligence and did not follow the required procedure while granting credit facility to the customers.

14. The Supreme Court in the case of **Viveka Nand Sethi Vs. Chairman, J & K Bank Ltd. and others** { (2005) 5 SCC 337} in para 22 has observed thus :-

> "22. The principle of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply. (See Gurjewan Garewal (Dr.) v. Dr. Sumitra Dash[3]). The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It cannot be put in a straitjacket formula. It cannot be applied in a vacuum without reference to the relevant facts and circumstances of the case. (See State of Punjab v. Jagir Singh and Karnataka SRTC v. S.G. Kotturappa[5].)

15. The Supreme Court in the case of **M. V. Bijlani Vs. Union of India and others** { (2006) 5 SCC 88} in para 25 has observed thus :-

> "25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witness only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

166

16. The Supreme Court in the case of Syndicate Bank and others Vs. Venkatesh Gururao Kurati {(2006) 3 SCC 150} in para 18 has held thus :-

> "18. In our view, non-supply of documents on which the enquiry officer does not rely during the course of enquiry does not create any prejudice to the delinquent. It is only those documents which are relied upon by the enquiry officer to arrive at his conclusion, the non-supply of which would cause prejudice, being violative of principles of natural justice. Even then, the non-supply of those documents prejudice the case of the delinquent officer must be established by the delinquent officer. It is well-settled law that the doctrine of principles of natural justice are not embodied rules. It cannot be put in a straitjacket formula. It depends upon the facts and circumstances of each case. To sustain the allegation of violation of principles of natural justice, one must establish that prejudice has been caused to him for non-observance of principles of natural justice."

17. The Supreme Court in **Govt. of T. N. and others Vs. S. Vel Raj** {(1997) 2 S.C.C. 708} observed that "the finding recorded by the Enquiry Officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said findings were perverse. It was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved."

18. The Supreme Court in the case of **Kuldeep Singh Vs. Commissioner of Police and others** {(1999) 2 S.C.C. 10} observed as under :-

> "9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be perverse finding and would be amenable to judicial scrutiny.
>
> 10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those

(167)

which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which would be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with".

19. The another case of **Yoginath Bagde Vs. State of Maharashtra and another**, { (1999) 7 SCC 739}, the Supreme Court after considering the earlier decisions observed as under :-

> "51....The law is well settled that if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonable person would have reached, it would be open to the High Court as also to this Court to interfere in the matter. In Kuldeep v. Commr. of Police this Court, relying upon the earlier decisions in Nand Kishore Prasad v. State of Bihar, State of Andhra Pradesh v. Rama Rao, Central Bank of India Ltd. v. Prakash Chand Jain, Bharat Iron Works v. Bhagubhai Balubhai Patel as also Rajinder Kumar Kindra v. Delhi Admn. laid down that although the court cannot sit in appeal over the findings recorded by the disciplinary authority or the enquiry officer in a departmental enquiry, it does not mean that in no circumstance can the court interfere. It was observed that the power of judicial review available to a High Court as also to this Court under the Constitution takes in its stride the domestic enquiry as well and the courts can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse".

20. In case of **B.C. Chaturvedi Vs. Union of India and others** {(1995) 6 SCC 749} observed as under :-

> "12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the

individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case".

21. In another latest decision, the Supreme Court in **V. Ramana Vs. A.P. SRTC and others** {(2005) 7 SCC 338} observed as under :-

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in

(169)

defiance or logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision".

22. It is well settled principle of law that the scope of judicial review is limited to the deficiency in decision making process, not the decision. In the present case the allegations of the charges levelled against the petitioner have been established on the basis of the sufficient evidence, which a reasonable person acting reasonably and with objectivity, may arrive at a finding of holding the charges against the delinquent officer, proved.

23. As a result and for the reasons stated-above, this petition fails and is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur